

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

HERMAN W. CROSSAN II

Plaintiff

VS.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

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5 : 06-CV-76 (CAR)

RECOMMENDATION

The above-styled Social Security appeal is presently before the court on the plaintiff's Motion for Attorney's Fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). On August 2, 2006, the Honorable C. Ashley Royal, the United States District Judge to whom this matter is assigned, remanded the Commissioner's decision pursuant to Sentence Four of 42 U.S.C. § 405(g). Judgment was entered accordingly that same day. In his EAJA petition, Plaintiff seeks compensation at the rate of \$163.70 per hour for the services of his attorney for 8.5 hours of attorney work, and \$65.00 per hour for 29.9 hours of paralegal services. The Commissioner does not oppose this motion for attorney's fees under EAJA.

DISCUSSION

The Equal Access to Justice Act ("EAJA"), as codified at 28 U.S.C. § 2412(d)(1)(A), provides that "a court shall award to a prevailing party other than the United States fees and other expenses, . . . incurred by that party in any civil action . . . brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."

Subsection (d)(2)(A) further provides that awards of attorney's fees shall be based on prevailing market rates for comparable services, but that fees in excess of \$125 per hour shall not be awarded, "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." Inasmuch as the Commissioner indicates that she has no objection to the plaintiff's petition for EAJA fees, and thereby appears to concede that the market rate is that requested by the plaintiff, it is the recommendation of the undersigned that plaintiff's motion for attorney's fees under the Equal Access to Justice Act be **GRANTED**, and that the Social Security Administration be **DIRECTED** to forward to plaintiff's attorney forthwith \$3334.95, said sum representing compensation for 8.5 hours of attorney work at a rate of \$163.70 per hour, and 29.9 hours of paralegal services at a rate of \$65.00 per hour. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable C. Ashley Royal, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 2nd day of November, 2006.

/s/ **Richard L. Hodge**
RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE